IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5355 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KETAN @ CHAKO PARSHOTTAMBHAI PATEL

Versus

DISTRICT MAGISTRATE OF SURENDRANAGAR

Appearance:

1. Special Civil Application No. 5355 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR AD OZA GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/10/2002

ORAL JUDGEMENT

The present petition has been filed by the detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by order dated 21/5/2002 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. The learned counsel for the petitioner has submitted that against the detention order, the detenu made representation on 23/5/2002 which has been rejected by the detaining authority after confirmation of the detention order by the State Government, though the detaining authority has no power to decide such representation after confirmation of the detention order by the competent authority. The learned counsel for the petitioner tenders the copy of order of the District Magistrate, Surendranagar rejecting the representation of the petitioner . The same be taken on record. The District Magistrate though has become functus offitio after confirmation of the detention order, the District Magistrate has passed order rejecting the representation of the petitioner. Hence on this ground alone, the impugned order is required to be quashed and set aside. On the other hand, the District Magistrate has not filed any affidavit controverting the say of the petitioner. Further, this point is squarely covered by the decision of this Court rendered in the case of SALIM POTHIYU REHMANBHAI BELIA VS. DISTRICT MAGISTRATE, DISTRICT MEHSANA AND ORS. reported in 1994 (2) GLH (UJ) 11, wherein this Court has held as under ;-

> "that the detaining authority is left with no power to consider and reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

4. Here in the present case, since the District

Magistrate has not forwarded the representation of the petitioner to the State Government for its consideration, the order of detention is null and void and is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 11/5/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Ketan Chako Parshottambhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P. DHOLAKIA, J.)

Rafik